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EXAMINER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _12 July 2007_.

2a)☐ This action is **FINAL.**   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-27_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-27_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

Summary

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7-12-07

has been entered.

2.   This **Non-Final Office Action** is responsive to applicant's amendment filed 7-12-

07. Currently **Claims 1-27** are pending.

Response to Arguments

3.   Applicant's arguments filed on 12 July 2007 have been fully considered but they

are not persuasive.

4.   The applicant argues with respect to Claim 1 on page 8 that Ellis does not teach

where feedback data is generated by each client without a user providing a preference.

The examiner respectfully disagrees.

In column 2 line 46-54, Ellis teaches that program viewing histories is used to

recommend further shows to the view. In the example shown, the viewer is reminded or

shown another show in a series that they have not watched – this is based on their

having seen other shows in the series. While Ellis does teach the user entering a

profile, as pointed out by the applicant, Ellis also teaches where feedback is gathered

by the system without the user entering a profile (e.g. viewing histories) to infer demand

in the future.

5.   The applicant argues on page 9 with respect to Claim 1 that Ellis does not teach

processing a feedback summary based on the feedback data from a plurality of clients

to prepare a measure of popularity.

        The examiner respectfully disagrees.

        In column 19 line 10-20 Ellis teaches that the program guide server tracks the

viewing histories and that this is used, in line 25-30, to perform demographic analysis

for advertisements (i.e. this is a measure of a popularity).   The examiner further points

out that the phrase "to prepare a measure of popularity...of the broadcast product" is

intended use and does not further limit the claim. Even so, were this limitation positively

recited, Ellis does teach tracking viewing histories (which is not based on the user

entering a profile) and using this to determine a measure of popularity.

6.   The applicant argues on page 9 with respect to Claim 1 that the official notice

fails to teach the claimed limitation of inferring demand for a potential broadcast product

yet to be scheduled.

        The examiner disagrees.

        The combination of Ellis and the Official Notice teaches the limitation. The

Official Notice was taken that it is old and well known to infer demand for future

products based on what customers like. Ellis teaches monitoring viewing history to

target advertisements and shows to viewers based on what they have watched.

Combining the Official Notice into Ellis teaches the limitation. Ellis teaches the

processing of viewing histories to recommend similar shows or targeted advertisements

Thus, Ellis only deals with what exists currently. The Official Notice teaches that it is

well known to infer demand based on what customers like. The combination of the two

teachings expands Ellis to include inferring future demand for a yet to be scheduled

broadcast product. The result is a predictable one because if similar television shows

and advertisements can be targeted to customers based on what they like, then future

demand for shows that have yet to be created can also be performed, as is taught by

the Official Notice. The examiner further notes that the Official Notice was not traversed

and is thus taken to be admitted prior art.

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

8.   **Claims 1-27** are rejected under 35 U.S.C. 103(a) as being unpatentable over

Ellis US 6,898,762 (hereinafter **Ellis**). (Ellis incorporates by reference Thomas US

2005/0149964, which is included in its entirety.)

Regarding **Claim 1**, Ellis teaches:

receiving a request to obtain consumer feedback on a broadcast product,

column 19 line 37, the server requests from the client device feedback on what

was watched by the user.

wherein the broadcast product is designed to be broadcasted, substantially

simultaneously, from a signal source to a service area via a broadcast medium,

and captured by a plurality of clients located in the service area during the

broadcasting

column 1 line 52, broadcast product is distributed via a variety of means,

including broadcast television facilities (i.e. substantially simultaneously, since it is being

broadcast as a television medium).

column 2 line 10-12, the broadcast product is captured by a plurality of clients

(i.e. television viewers) who are in the service area for that distribution facility.

sending at least one product description data to the plurality of clients via

the broadcast medium,

column 4 line 49-54, program guide data is transmitted (i.e transmitted by the

main broadcast facility) to the interactive television program guide equipment (i.e. the

plurality of clients).

wherein sending the product description data includes sending

descriptions of features that characterizes the broadcast product;

column 4 line 53-57, product description data includes channels, titles, descriptions program identifiers, that characterize the programs (i.e. product) that is being broadcast.

receiving an automated feedback data on the broadcast product from each of the plurality of clients, wherein the automated feedback data is generated automatically by each client without the user of the client providing a preference;

column 19 line 13-15, the program guide client tracks what users are watching (without the user knowing what is tracked) and provides this to the server on request from the server – this transmission is transparent to the user watching television as well as what has been tracked – it is passive because it is collecting viewing histories.

the receiving of the automated feedback data including that each client generates at least one rating to indicate the user's interest level with respect to each of the features.

Column 19 line 35-40, the data that is collected generates several ratings as to what advertisements were collected, viewing histories (e.g. number of which shows were watched). The examiner notes that "to indicate the user's interest level..features" is intended use and does not further limit the claim.

processing a feedback summary based on the automated feedback data received from the plurality of clients to prepare a measure of popularity of each feature of the broadcast product; and inferring, based on the feedback summary demand for a broadcast product that is scheduled for broadcasting over the broadcast medium.

Column 19 line 64-67, the viewing histories may be used to suggest advertisements (i.e. infer demand) that would be provided to the user in the future. The phrase "to prepare a measure of popularity...of the broadcast product" is intended use and does not further limit the claim.

Ellis teaches inferring what a user will want to watch based on characterizing and rating what the customer has watched and based on their profile. Ellis does not teach inferring future demand for a yet to be scheduled broadcast product.

However, it is old and well known in the art to infer demand for future products based on what consumers like. Consumer preferences form an important input in designing new products so that the new products are likely to satisfy the consumer preference.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Ellis, regarding characterizing consumer demand to predict what available shows the consumer might want to watch, to include the step of inferring future demand for a yet to be scheduled product, because it would ensure that future shows met consumer preferences and improved consumer satisfaction.

Regarding **Claim 2**, Ellis teaches:

Wherein receiving the automated feedback data further includes that the clients generate at least one of the following:

relevance data to indicate a relevance level of each of the features to the user's interest in the broadcast product; and

column 20 line 24-27, the individual's profile is applied to the product features to determine a level of interest the user might have in the particular television program.

Ellis teaches using viewer history and the expressed profile of a user to determine what broadcast product the user is likely to prefer in the future.

Ellis does not teach using data to indicate an accuracy level of a first rating based on the user's viewing history.

However, the concept of using accuracy data to determine how accurate a prediction is based on actual data is a concept that is old and well known in the art of forecasting. This technique helps improve future predictions by providing an indication of how accurate past predictions were.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Ellis, regarding using a user viewing history and profile information to predict a user's future preferences, to include the step of receiving believability data to indicate and accuracy level of a consumer's rating of a product, because it would improve the accuracy of the future prediction.

Regarding **Claim 3**, Ellis teaches:

wherein the request to obtain consumer feedback is received from a

product provider of the broadcast product.

column 19 line 37, the request to obtain the feedback comes from the program

guide server, which is a provider of the broadcast product (see Figure 2a, the program

guide server provides the broadcast product.

Regarding **Claim 4**, Ellis teaches:

wherein the request to obtain consumer feedback comprises a request to

test the success of one or more products.

Column 19 line 14-15, the feedback may track how long a viewer watched a

program, e.g. if they watched it longer than a certain period of time.

Regarding **Claim 5**, Ellis teaches:

wherein the feedback summary comprises a product success data for each

of the one or more products.

Column 19 line 14-15, the tracking of how long a user watches a show measures

the success of that show. This is done for all shows a viewer watches (i.e. one or more

broadcast products).

Regarding **Claim 6**, Ellis teaches:

wherein the request to obtain consumer feedback comprises a request to compare the success of two or more attributes of a product <u>against each other</u>

column 18 line 55-60, the server processes the logical expressions that determine how well different attributes of a broadcast product meet the expressed criteria for a user. – see also column 19 line 50-55, the program guide server compares programs that have been watched against programs that have not been watched – i.e. this compares the success of product attributes against each other in determining a recommended listing. Another comparison (i.e. a second attribute for comparison) is the use of Nielsen ratings – see column 19 line 60-65). Because the program guide server is making recommendations to the viewer, it is taking into account a plurality of aspects into account in making a recommendation.

Regarding **Claim 7**, Ellis teaches:

wherein the feedback summary comprises an attribute success comparison data.

column 18 line 55-60, the server processes the data to determine which shows meet the criteria as set out by the logical expressions of the user. The listing of shows comprise success comparison data since they are shows that have passed the user's criteria.

Regarding **Claim 8**, Ellis teaches:

wherein the request to obtain consumer feedback comprises a request to compare the success of two or more products against each other.

Column 19 line 14-15, the feedback tracks how long a viewer watched different program, i.e. by comparing the watching time with a certain duration. See also column 19 line 50-55, the program guide server compares programs that have been watched against programs that have not been watched – i.e. this compares the success of products against each other based on which one has been watched, and which one has not been watched.

Regarding **Claim 9**, Ellis teaches:

wherein the feedback summary comprises a product success comparison data.

Column 19 line 14-15, the feedback tracks how long a viewer watched different program, i.e. by comparing the watching time with a certain duration. The tracking data compares the success of the products with exceeding a certain viewing time.

Regarding **Claim 10**, Ellis teaches:

wherein the request to obtain consumer feedback comprises a request to compare the success of two or more ways of marketing a product against each other.

Column 19 line 39-41, advertisement usage is tracked to determine which

advertisements have been selected and which have not been selected, i.e. the

advertisements are compared against each other. (see column 19 line 44 for reference

to 2005/0149964, incorporated by reference into Ellis). Para 47 and 49 in Thomas

discuss how advertisements are tracked to determine which advertisements (i.e. a

comparison) result in purchases by consumers –see para 55.

Regarding **Claim 11**, Ellis teaches:

wherein the feedback summary comprises a marketing success

comparison data.

Thomas Para 62, the advertisement data includes comparison data to determine

the effectiveness of advertisements, e.g. based on the location of the advertisement in

the program guide.

Regarding **Claim 12**, Ellis teaches:

wherein the product description data comprises meta-data

column 15 line 25, program guide data (e.g. what kind of show it is, MPAA rating)

is meta data, because it is data about the program, i.e. data describing another set of

data.

Regarding **Claim 13**, Ellis teaches:

the product description data comprises program guide information

column 15 line 25, the product description data is program guide data (e.g. what kind of show it is, MPAA rating) .

Claims 14-27 recite similar limitations as those recited in **Claims 1-12** above, and are therefore rejected under the same rationale.
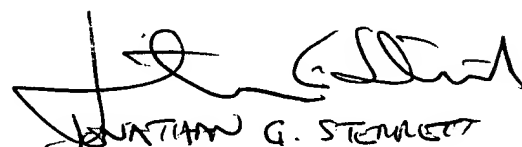
Conclusion

9.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is (571) 272-6881. The examiner can normally be reached on Monday-Friday, 8:00AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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